

इसे वेबसाईट www.govtpressmp.nic.in
से भी डाउन लोड किया जा सकता है.



मध्यप्रदेश राजपत्र

(असाधारण)

प्राधिकार से प्रकाशित

क्रमांक 632]

भोपाल, शनिवार, दिनांक 25 नवम्बर 2017—अग्रहायण 4, शक 1939

विधि (निर्वाचन) कार्य विभाग

भोपाल, दिनांक 24 नवम्बर 2017

फा. क्र. ई.पी.05-2014-चार-10356.— भारत निर्वाचन आयोग की अधिसूचना संख्या 82-म.प्र.-वि.स.-(05/2014)-2017 दिनांक 23 अक्टूबर 2017 सर्वसाधारण की जानकारी के लिये प्रकाशित की जाती है.

एस. एस. बंसल, सचिव.

भारत निर्वाचन आयोग

निर्वाचन सदन, अशोक रोड, नई दिल्ली—110 001

नई दिल्ली, दिनांक 23 अक्टूबर, 2017—01 कार्तिक, 1939 (शक)

अधिसूचना

सं० 82/म.प्र.—वि.स./ (05/2014)/2017 :- लोक प्रतिनिधित्व अधिनियम, 1951 (1951 का 43) की धारा 106 के अनुसरण में, भारत निर्वाचन आयोग, श्री राधे श्याम धाकड़ द्वारा दायर निर्वाचन याचिका 2014 की संख्या 05 (राधे श्याम धाकड़ विरुद्ध जयवर्धन सिंह एवं अन्य) में मध्य प्रदेश के माननीय उच्च न्यायालय की ग्वालियर खंडपीठ के दिनांक 12.09.2017 के निर्णय/आदेश को एतद्वारा प्रकाशित करता है ।

आदेश से,

हस्ता./-

(अनुज जयपुरियार)

प्रधान सचिव,

भारत निर्वाचन आयोग.

ELECTION COMMISSION OF INDIA

Nirvachan Sadan, Ashoka Road, New Delhi—110 001

New Delhi, dated 23rd October, 2017—01 Kartika, 1939 (Saka)**NOTIFICATION**

No. 82/MP-LA/(05/2014)/2017 :- In pursuance of Section 106 of the Representation of the People Act, 1951 (43 of 1951), the Election Commission of India hereby publishes the judgment/order dated 12.09.2017 of the Gwalior Bench of Honb'le High Court of Madhya Pradesh in Election Petition No. 05 of 2014 (Radhey Shyam Dhakad Vs. Jaivardhan Singh & Ors.)

Election Petition No.05/2014

HIGH COURT OF MADHYA PRADESH
BENCH AT GWALIOR

(SB : VIVEK AGARWAL, J.)

Election Petition No.05/2014

Radhey Shyam Dhakad.

Vs.

Jaivardhan Singh & Ors.

Shri Abhijeet Awasthi, Shri Mahesh Goyal, Shri Suraj Bajpai and
Shri Arjun Bajpai, learned counsel for the petitioner.

Shri V.K.Bhardwaj, learned senior counsel, with Shri A.V.Bhardwaj
and Rohit Batham, counsel for respondent No.1.

Shri Radha Mohan Tiwari, learned counsel for respondent No.2.

Shri V.S.Chaturvedi, learned counsel for respondent No.3.

Shri D.P.S.Bhadauria, learned counsel for respondent No.5.

Shri D.R.Sihare, learned counsel for respondent No.7.

Date of hearing : 11.08.2017.

Whether approved for reporting :

Law laid down :

Significant paragraph numbers :

ORDER

(Passed on 12 September, 2017)

This election petition has been filed by the petitioner,
who contested election from Constituency No.31 Raghogarh,
District Guna, in the elections which were conducted in the
month of November 2013 so as to constitute the Madhya

Pradesh Legislative Assembly. The petitioner was a candidate from Bhartiya Janata Party, whereas respondent no.1 was a candidate from Indian National Congress, respondent no.2 from Samaawadi Party, respondent no.3 from Bahujan Samaaj Party, respondent no.6 from Lok Janshakti Party and other respondents contested the election as independent candidates. It is apparent from record that respondent no.5 was proceeded *ex parte*.

2. On 04.10.2013, the Election Commission had issued notification for the elections which took place in November 2013 and the petitioner had filed his nomination as Annexure EP/1.

3. As per the Gazette notification dated 04.10.2013, the last date for nomination was 08.11.2013, the date of scrutiny of nomination was 09.11.2013, last date of withdrawal of candidature was 11.11.2013 and date of poll was 25.11.2013 and counting had taken place on 08.12.2013.

4. It is petitioner's case that as per the Model Code of Conduct, none of the candidates or political parties or their representatives were required to make any appeal to caste or communal feelings for securing votes. Mosques, Churches, Temples and other places of worship were not to be used as forum for election propaganda. In this regard, the petitioner has placed reliance on press note dated 04.10.2013, which is marked by the petitioner as Annexure EP/2.

5. According to the petitioner, the corrupt practices are to be seen from the date 01.11.2013, which was the date for filing of the nominations, till the date of the voting, i.e., 25.11.2013. According to him, Raghogarh Constituency has

total 1,91,631 electors; out of which 1,29,216 were from General and OBC Category, 33,503 from Scheduled Caste Category and 22,039 from Scheduled Tribe Category. Besides this, there were 6,873 Muslim voters. Thus, 96% of the total electors were belonging to the Hindu community or tribal tradition. According to the petitioner, respondent no.1 got published calendars, pamphlets, post cards size leaflets containing photographs of Hindu Gods/Idols such as Laxmiji, Ganeshji and Saraswatiji besides his own photographs and has been shown in these documents conveying general public his wishes for Diwali and new year. According to the petitioner through these documentary communications, respondent no.1 was appealing to Hindu community on the basis of religious symbols and was requesting Hindu community to vote for him as he himself is Hindu.

6. Learned counsel for the petitioner admits that all the contesting candidates were belonging to Hindu community and according to the petitioner, the calendars were deliberately published for the year 2013, i.e., the election year, by respondent no.1 in order to circumvent provisions of Model Code of Conduct and to defeat the purposes of Section 123 (3) of the Representations of Peoples Act, 1951 (hereinafter shall be referred to as the "**R.P.Act**"), which is applicable during the period of Code of Conduct. It is also submitted that these calendars were circulated to the persons belonging to the Hindu community between 10.11.2013 to 24.11.2013.

7. As per the petitioner one Shri Mangilal Son of Kamarlal Mali, resident of Salota had received such calendar on 12.11.2013 from the supporters of Indian National Congress at

around 1.30 PM and he was requested to vote in favour of respondent no.1 as he is a Hindu and if he becomes a member of Legislative Assembly, then the Constituency shall not be short of money as respondent no.1 has blessings of Goddess Laxmiji. Similarly, Shri Rakesh Khatik Son of Shri Laxminarayan, resident of Village Barsat had received such calendars on 14.11.2013 from the supporters of INC, who had demanded votes for respondent no.1 on the similar religious sentiments. It is further mentioned that on 16.11.2013, PW5 Shri Bhagwanlal Mair Son of Shri Kishanlal Mair, resident of Village Meerpur had received calendars with same suggestions from the supporters of INC. Similarly, one Shri Dhan Singh Baghel Son of Shri Shyamlal Baghel of Village Dongar was given calendar at around 4.00 O'clock in the evening on 17.11.2013. Besides these persons, it is pleaded that the petitioner himself observed circulation of such calendars & pamphlets by respondent no.1 and his election agent and other persons with the consent of respondent no.1 in the temples of the Constituency on 18.11.2013. It is further submitted that such calendars were hanged at the places which are visible to the general public, mostly on the entry of the temples within the temple arena where the deity is placed. According to the petitioner, he had witnessed hanging of calendars at the following temples :-

- a. Hanuman Temple Near GAIL Choraha, AB Road, Raghogarh, Guna.
- b. Hanuman Temple Near Bharsula Choraha, AB Road, Raghogarh, Guna.
- c. Shivaliya, Near Block Colony, Raghogarh.
- d. Ganesh Mandir, Near Krishak Upaj Mandi, Raghogarh.

- e. Saibaba Mandir, SADA Colony, Raghogarh.
f. Shivaliya Mandir, SADA Colony, Raghogarh."

8. It is further averred that the petitioner through his election agent had photographed such calendars hanging within the temple area on 19.11.2013 and such photographs were taken on 19.11.2013 alongwith the calendars, which are marked as Annexure EP/3 and calendar is Annexure EP/4. Besides these, it is submitted that rear side of the pamphlets EP/5 contained Aarti of Goddess Laxmiji and photograph of respondent no.1. Respondent no.1 conducted public meeting at village Jamner on 19.11.2013, which was attended by PW7 Shri Sagar Singh Dhakad Son of Shri Ganpat Lal Dhakad and Shri Jaideo Saini Son of Shri Kanirama Saini and after the said public meeting, respondent no.1 and his election agent were seen instructing their supporters to circulate such pamphlets and also the calendars with the suggestion to the persons receiving the same that they should vote for respondent no.1 as he is a Hindu and he is blessed by Goddess Laxmiji and his win will bring prosperity like Goddess Laxmiji and further no one should throw away such calendars as it would be demeaning the Goddess. It is further contended that witnesses have also informed the petitioner that this message of respondent no.1 was circulated through his supporters amongst the persons of their village and they found their opinion on the basis of that like God and Goddess through respondent no.1 will bring prosperity. It is further alleged that on 20.11.2013, respondent no.1 had conducted public assembly at Village Aron and after assembling, the supporters of INC at the prompting of respondent no.1 circulated the

calendars and pamphlets, which were witnessed by PW6 Harpal Singh Yadav Son of Shri Nathan Singh Yadav and PW8 Shri Narayan Singh Son of Mohar Singh. Similarly, in Village Ruthiyai, PW3 Shri Govind Son of Shri Chironjilal Sen had received such calendars and pamphlets with similar suggestions as narrated above. According to the petitioner, the petitioner had submitted a written complaint to the Observer, Returning Officer, District Election Officer and SHO Police Station Raghogarh. Such complaint was submitted alongwith the original copy of calendar, pamphlets and the photographs, which indicated such material at several temples. It is admitted that out of so many complaints mentioned by the petitioner, only one, which was submitted to the Police Station Raghogarh, has been marked as Ex.D/1. Other complaints have not been exhibited by the petitioner. It is further submitted by the petitioner that this complaint Ex.D/1, which was filed as Annexure EP/6, was decided by the SDO(P) vide Annexure R/1 dated 22.11.2013 addressed to the Returning Officer.

9. It is further submitted that respondent no.1 had filed IA No.2492/14 raising objections about maintainability of the petition and this was decided on 04.07.2014 rejecting the pleas taken by respondent no.1. The basic objections, which were taken by respondent No.1, were that a copy of the pleadings, affidavit and annexures attached with the petition supplied to the answering respondent, was not verified by the petitioner nor it was the photocopy of verified petition as there is no signature of the petitioner at the place where the petitioner is supposed to sign nor annexures have been

verified, however, the language of verification is mentioned on the annexures. It was further submitted that as per the proviso of Section 83 of the R.P.Act, the affidavit accompanying with the election petition in the case of alleged corrupt practice, has not been filed as alleged by the petitioner. The third objection was that the instant petition was filed at 5.00 PM. It is submitted that as per Rule 42 of Chapter-X of High Court Rules, 2008, the election petition shall be prepared, processed, listed and heard in accordance with the Rules relating to election petitions framed by the High Court, and by exercising powers under Article 225 of the Constitution of India, the High Court has framed Rules relating to election petitions, and sub-clause (c) of Rule 2 provides that every election petition shall be couched in proper language and in conformity with Sections 81, 82 and 83 of the R.P.Act. Every election petition, complete in all respects, shall be presented during the Court hours to the Additional Registrar or Deputy Registrar (Judicial) at Jabalpur. Referring to this IA and the order, which was passed by this Court on 04.07.2014, the learned counsel for the petitioner submits that now the objection in regard to maintainability of the petition cannot be raised by respondent no.1, as such issue already stood decided and as per the law laid down by the Hon'ble Supreme Court in the case of **Ishwar Dutt v. Land Acquisition Collector & Another : (2005) 7 SCC 190**, it has been held that the provisions of Section 11 of the Code of Civil Procedure, 1908 in respect of *res judicata* are applicable even between different stages of same proceedings and, therefore, now such plea of maintainability of the election petition on the ground of it

being not presented in time or not accompanied with proper affidavit, cannot be raised as that issue already stood concluded vide order dated 04.07.2014.

10. According to the petitioner, since the result of the complaints made by the petitioner to the authorities was not communicated to the petitioner, therefore, the petitioner through his election agent had moved an application dated 28.12.2013 before the Sub-Divisional Magistrate in order to obtain certified copy of the election related documents of the Constituency to further know about the status of the complaints, but the Sub-Divisional Magistrate was on leave and since he did not join back till the drafting of the petition on 19.01.2014, thus, the outcome of the complaint or other facts, which could have been pleaded on perusal of the record, were not pleaded in the instant petition. It is also submitted that however counting of votes had taken place on 08.12.2013 and in such counting, respondent no.1 had secured 98,041 votes against the present petitioner who had secured 39,837 votes and, therefore, respondent no.1 was declared as elected. It is further submitted that in fact the petitioner is alleging violation of the provisions contained in Section 123 (3) of the R.P.Act. Section 123 (3) provides that an appeal by a candidate or his agent or by any other person with the consent of a candidate or his election agent to vote or refrain from voting for any person on the ground of his religion, race, caste, community or language or the use of, or appeal, religious symbols or the use of, or appeal to, national symbols, such as National Flag or the national emblem, for the furtherance of the prospects of the election of that candidate or for

prejudicially affecting the election of any candidate.

11. It is further submitted that since there was an appeal by respondent no.1 on the ground of his religion and respondent no.1 had used religious symbols for furtherance of the prospects of his election prejudicially affecting the prospects of the petitioner, he is guilty of corrupt election practices as have been defined under Section 123 of the R.P.Act.

12. Learned counsel for the petitioner further submits that the name and address of the Printer was not mentioned on the calendar and pamphlets, but it only contains the name of the Printer as "Advance Line", and parallel to that a phone no.4274286 has been mentioned without any city code. According to the petitioner, his election agent searched for the city code and traced the Printer in Bhopal and then visited his office on 31.12.2013 and gathered information that such pamphlets and calendars were published at the instance of respondent no.1 and his election agent. The Proprietor of Advance Line was Shri Vishal Jain having office at SB-7-9, Vijay Stham Complex, Zone-I MP Nagar, in front of Vishal Mega Mart, Bhopal (MP). It is submitted that this fact, as has been pleaded in para 18 of the election petition, has not been specifically denied by respondent no.1 and in fact there is an admission on the part of respondent no.1 when he has mentioned in his reply to the contents of para 18 to the effect that Section 127A came into play after 04.10.2013, before it, there was no declaration of any election, more-so Section 127A applies only on the election pamphlets or posters and so-called calendar and post-card itself do not indicate any election. Therefore, in view of such admission, corrupt

practices can be deemed to have been admitted by respondent no.1 and, therefore the petition deserves to be allowed and election of respondent no.1 needs to be set aside.

13. It is submitted that as per the provisions contained in Section 84 of the R.P.Act, the petitioner is entitled to claim a declaration that the election of all or any of the returned candidates is void and further claim a declaration that he himself or any other candidate has been duly elected. Thus, the learned counsel for the petitioner submits that in view of the provisions contained in Section 84, the election of respondent no.1 be declared as void and further the petitioner be declared as a duly elected candidate. The attention has also been drawn to the provisions contained in Section 101 of the R.P.Act, which provides for the grounds, for which a candidate other than the returned candidate may be declared to have been elected. He submits that in terms of the provisions contained in Section 101 (b), the result of respondent no.1 be declared as void and the petitioner be declared as duly elected.

14. Learned counsel for the petitioner submits that the grounds for declaring election of respondent no.1 to be void are contained in Section 100 (1) (b), which reads that subject to the provisions of sub-section (2), if the High Court is of the opinion – (b) that any corrupt practice has been committed by a returned candidate or his election agent or by any other person with the consent of a returned candidate or his election agent, then the High Court shall declare the election of the returned candidate to be void and while doing so in terms of the provisions contained in Section 100 (2) (c), the High Court

is required to be satisfied that the candidate and his election agent took all reasonable means for preventing the commission of corrupt practices at the election. He submits that in view of the cross-examination of respondent no.1 (DW8), it is apparent that he perpetuated corrupt practices and did not took any steps to prevent the commission of corrupt practices at the election. It is further submitted that in terms of the provisions contained in Section 82 of the R.P.Act, Publisher/Printer of the pamphlets was not a necessary party and, therefore, no infirmity can be attributed in the election petition on account of not impleading him as a party.

15. Counsel for the respondent No.1 submits that as per Chapter 7 of the High Court of Madhya Pradesh Rules 2008 (hereinafter shall be referred to as "the Rules of 2008"), courts' timings are up to 4.30 p.m. and since the election petition was filed at 5.00 p.m., as is evident from the endorsement on the first page of the election petition, therefore, election petition was not filed within the time limit. He also submits that rules are to be followed strictly. He further submits that nobody has been impleaded to allege corrupt practices, and therefore, in terms of the provisions contained in Section 99 (1)(a)(ii) of the R.P. Act, Publisher and Printer were to be impleaded as party and no details of date, amount charged by the Publisher/Printer have been given, therefore, no inference can be drawn about the corrupt practices. He further submits that the election petition is not properly verified, and therefore, the election petition deserves to be dismissed. It is also submitted that the petitioner has intentionally not disclosed the result of his complaint as is contained in Ex.D/1, though the same has been brought on record by respondent No.1 as Annexure

EP-1, and therefore, for intentional non-disclosure of the result of the complaint made by the petitioner and in absence of any follow up after rejection of such complaint by the SDO(P), the natural corollary to the consequent events will be to presume that the petitioner has failed to prove any corrupt practices. He further submits that there was no compliance of the provisions contained in Rule 2 (a) of the rules relating to Election Petition contained in Chapter 7 of the rules relating to election petition. He submits that Rule 2 (a) provides that Every Election Petition shall be typewritten or printed fairly and legibly on white foolscap size paper of reasonable quality, one side of the paper only being used, leaving a quarter margin on the left and at least 1/2 Inches open space on the top and bottom of each sheet. He submits that since the petition was submitted on green paper, there is non-compliance of the provisions contained in Section 2 (a) of the Rules relating to Election Petition.

16. Learned counsel for respondent No.1 further submits that evidence has been led without any pleadings and name of the election agent has been mentioned as Ramsajivan in para 18 of the election petition, whereas there is no person in the name of Ramsajivan Sharma. Thus, since it is alleged that Ramsajivan got information from Bhopal and no person in the name of Ramsajivan has been examined by the petitioner, therefore, intimation received by the petitioner from Ramsajivan being not substantiated can not be relied upon. He further submits that the affidavit filed by the petitioner does not contain any signatures below verification and no justification has been given for not verifying the pleadings properly. Therefore, non-verification of the affidavit and mentioning of wrong name of the election agent is fatal in view

of the provisions contained in Section 83 of the R.P. Act. He further submits that all the affidavits were prepared at Jabalpur by Mr. Awasthi, Advocate, as has been admitted by the Election Petitioner, but none of them were sworn at Jabalpur. He submits that the photographer who has been examined by the petitioner has contradicted the statement made by the election agent inasmuch as the photographer Shri Santosh Dhakad S/o Shri Mangilal Dhakad (P.W.4) has deposed that he had gone to various temples on 19.11.2013 on the instruction of Shri Rajeev Nayan Sharma to take photographs whereas Rajeev Nayan Sharma in his deposition has said that photographs were taken in front of him by Santosh Dhakad. Thus, reliability of the photographs gets diluted. It is also submitted that the petitioner had intimation about using of calendars and posters since 12.11.2013 but he did not report the matter to the observers in terms of provisions contained in Annexure EP/2, which provides that deployment of general observer with publication of their address, telephone numbers in local newspapers so general public can quickly approach them for any grievance redressal. He further submits that there is provision of videography as is evident from Annexure EP/2 and CD of videography recording was to be made available on payment to anybody, who wishes to obtain copy of the same but since copy of the videography CD was not made available to substantiate the allegation of corrupt practices, therefore, accusations of corrupt practices could not be said to have been substantiated. He further submits that in Annexure EP/2, there is a provision for complaint redressal mechanism and a toll free number 1950 is provided to lodge complaint. Besides this, complaint could have also been registered on the website and also through SMS on any of the

call centers but the petitioner has failed to produce any material that he resorted to any of these provisions of complaint redressal mechanism so to avail timely action in the hands of the Election Commission to countermand the election of respondent No.1. He further submits that since the petitioner did not make any report to the Election Commission, it can not be said that the petitioner had any intimation about said malpractice and after losing the election he is indulged in mudslinging and false accusations. Had the petitioner reported the same in time, then the election expenses would have been increased by including the expenses for printing the Calendar, Pamphlets etc. It is also submitted that the petitioner did not take any step for confiscation of original material from the Printer/Publisher and the documents, which have been filed by them as Annexure EP/3 to EP/5, are in fact coloured photos and not the original once, therefore, no evidence could have been led in regard to these documents without making the compliance of the provisions contained in Sections 65 and 66 of the Evidence Act. It is further submitted that all the witnesses are tutored witnesses and they have made stereotyped statements and have not given any cogent evidence to prove the allegation of corrupt practices, which needs to be proved beyond reasonable doubt as is the parameter of proving the criminal case, inasmuch as the allegation of corrupt practices is having criminal connotation for a candidate if he is found to be indulged in corrupt practices. He submits that none of the witnesses cross-examined by the petitioner were given a suggestion as to the acts of respondent No.1 or his election agent to prove the allegation of corrupt practices. He further submits that merely exhibiting the documents does not dispense with the proof of

the documents, and therefore, the petition is to be examined in all its technicality inasmuch as the principle of equity is not applicable, and therefore, the petition being defective and suffering from several technical lacuna, as discussed above, deserves to be dismissed with costs.

17. None of the other counsel for respondents have advanced any argument before this court and merely marked their presence for their respective parties.

18. In rebuttal, learned counsel for the petitioner submits that there was no need to issue notices to the Publisher/Printer, as his offence will be covered by the provisions of Section 127A, which deals with electoral offence and he will not come within the four corners of corrupt practices and since Section 99 of the Act only deals with the corrupt practices, there was no need to implead Printer as party. He further submits that since there is no specific denial as to the names and details of the Printer mentioned in para 18 of the election petition by way of reply given by respondent No.1 in para 19 of his written statement, therefore, he was not required to be called for. He further submits that using religion, religious symbol and religious sentiments is sufficient to constitute corrupt practices, and therefore, typographical error in the name of election agent will not result in dismissal of the election petition. He further submits that these issues have already been dealt with while deciding I.A.No. 2492/2014 vide order dt.4.7.2014, and therefore, they now can not be raised again as the principle of *res judicata* will be applicable between the two proceedings of the same case also. He further submits that the verification has been made in terms of the Rule 94 (a) of the Conduct of the Election Rules, which provides a Form No.25 and the affidavit of the petitioner is in

the same format. He further denies that videography could have been produced before the court inasmuch as he submits that videography would have been in pick and choose manner as at that time Government at the Center was of the party to which respondent No.1 belongs and it can not be said that everything is in camera. He further submits that merely some minor contradictions in oral testimony can not defeat the case of the petitioner which already stood proved on the basis of documentary evidence. Thus, he prays for allowing the election petition and declaring the election of respondent No.1 as void with further prayer for declaring the petitioner to have been elected in place of respondent No.1.

19. Based on such submissions/averments in the petition, the following issues were framed on 12.01.2015 by the Court:-

"(i) Whether respondent no.1 distributed calendars, pamphlets and post card size leaflets having images of Hindu Gods/idols such as Laxmiji, Ganeshji and Saraswatiji in contravention with the provisions of Section 123 (3) of the Representation of Peoples Act, 1951?

(ii) Whether the respondent no.1 and his election agent or other persons with the consent of respondent no.1, used the religious symbols for furtherance of prospects of his election?

(iii) Whether the respondent no.1 has used the temples or places of worship as forum for election propaganda? Effect.

(iv) Whether the non-printing of name and address of the Publisher on the election pamphlets and posters of respondent no.1, is violative of Section 127 (a) of the Representation of People Act, 1951?

(v) Whether the election petition filed has not been complied with rule 2 (a) of the Election Petition Rules? Effects.

(vi) Whether filing of election petition at 5.00 PM on 21.05.2014 is violative of High Court

Rules at Chapter-VII ? Effect.

(vii) Whether the election petition is not maintainable on the ground that the election does not give the names and addresses of the persons who committed corrupt practices for respondent no.1?

(viii) Whether the election petition is properly verified? Effect.

(ix) Whether the petitioner has intentionally not disclosed the result of his complaint filed before the SDM, Raghogarh? Effect.

(x) Relief and costs?"

20. Before adverting to the merits of the case, this court would like to deal with issues No.(v) to (ix) reproduced herein above.

21. As far as issue No.(v) is concerned, it deals with non compliance of the provisions of Rule 2 (a) of the rules relating to election petitions, which provides that Every Election Petition shall be typewritten or printed fairly and legibly on white foolscap size paper of reasonable quality. The objection raised by the learned counsel for respondent No.1 is in regard to filing of election petition on a ledger paper. The fact of the matter is that in Chapter 10 of the High Court of Madhya Pradesh Rules, 2008, which deals with preparation of cases, Rule 2 (7) (b) provides that neatly typed or printed on one side of a ledger paper of foolscap size. Therefore, Rule 2 (a) has to be read with Rule 2 (7) (b) under Chapter 10 of the High Court of Madhya Pradesh Rules, 2008, and therefore, typing of election petition on a ledger paper will not throw out the election petition as not maintainable. In fact, the High Court of M.P. Rules 2008 have been framed in exercise of powers conferred by Article 225 of the Constitution of India, Section 54 of the States Reorganisation Act, 1956, Clauses 27 and 28 of the Letters Patent, Section 3 of the Madhya Pradesh Uchch

Nyayalaya (Khandpeeth Ko Appeal) Adhiniyam, 2005 for regulating practice and procedure of the High Court. The election petition is provided under Chapter II of the High Court of M.P. Rules, 2008 and thus it is apparent that the High Court Rules itself provides for filing of the petition before the High Court on a ledger paper, and therefore, merely procedural irregularity can not be a ground for rejection or dismissal of the election petition as has been held by the Gauhati High Court in the case of **Samir Ranjan Barman v. Bhanu Lal Saha** as reported in **AIR 1990 Gauhati 68**. Moreover, this issue already stood concluded vide order dt.4.7.2014 passed by this court wherein similar issue was raised as issue number (vii). Thus, the issue No.(v) is decided that filing of election petition on a ledger paper will not be said to be violative of Rule 2 (a) of the rules framed regarding election petition.

22. As far as issue No.(vi) i.e. filing of election petition at 5.00 p.m. being violative of High Court Rules is concerned, it is argued by the learned counsel for respondent No.1 that the court timings are up to 4.30 p.m., as is apparent from Rule 1 of Chapter VII of the High Court of Madhya Pradesh Rules, 2008, and therefore, petition could not have been accepted at 5.00 p.m. Learned counsel for respondent No.1 has placed reliance on the judgment of this Court in the case of **Smt. Guddi Vs. The Prescribed Authority Cum Sub Divisional Officer** as reported in 2017(1) **M.P.L.J. 650** to submit that non-compliance of mandatory requirement at the time of presentation of the petition will entail dismissal of the election petition. It is submitted that in absence of non-compliance of mandatory requirements in regard to non-presentation of the election petition within the court timings will entail its dismissal. Learned counsel for respondent No.1 submits that there are

specific rules and rule 3(2) of the M.P. Panchayat (Election Petitions, Corrupt Practices and Disqualification for Membership), Rules 1995, prescribes that the election petition should be attested under the signature of the petitioner to be a true copy of the petition, whereas in the present case, provisions of rule 3(2) of the rules of 1995 will not be applicable inasmuch as according to High Court Rules provided in Chapter 7, specially rule 1(2) Registry works upto 5 pm, therefore, presentation of the election petition at 5 pm will not amount to violation of the provisions of the High Court of M.P. Rules, 2008. Besides this, there is no analogous provision to rule 3(2) of the Rules of 1995, and therefore, the ratio of the judgment in the case of **Smt. Guddi (supra)** is not applicable.

23. It is seen that the "working hours" are provided under Chapter VII of the High Court of M.P. Rules 2008. Rule 1 (1) of the aforesaid rules provides Courts : Except on holidays and during vacation, the Courts shall function everyday and transact judicial work between 10.30 A.M. and 4.30 P.M., whereas Rule 1 (2) under Chapter VII provides that Registry : except on Registry holidays, the Registry shall function between 10.00 A.M. and 5.00 P.M. Thus, since filing is to be made before the Registry and Registry timings as are provided under Chapter 7 Rule 1 (2) are up to 5.00 P.M., filing of election petition at 5.00 P.M. can not be said to be violative of any of the provisions contained in Chapter 7 of the High Court of M.P. Rules 2008. Thus, the effect will be that this issue is answered that there is no violation of the High Court Rules & thus election petition is maintainable.

24. As far as issue No.(vii) is concerned, it deals with non-disclosure of names of the persons who committed corrupt

practices for respondent No.1 and whether in view of such non- disclosure, the election petition is maintainable or not. In this regard, learned counsel for the petitioner has drawn attention of this court to the fact that there was no need to issue notices to the Printer/Publisher under Section 99 of the R.P. Act as his act will be covered under Section 127A of the R.P. Act, which provides restrictions on the printing of pamphlets, posters etc. inasmuch as sub section (4) of Section 127A provides for punishment with imprisonment for a term which may extend to six months, or with fine which may extend to two thousand rupees, or with both. Thus, he submits that Section 127A deals with electoral offences and not with corrupt practices as are mentioned in Section 123 of the R.P. Act. As far as notice under Section 99 of the R.P. Act is concerned, it is to be issued only to a person being guilty of any corrupt practice.

25. On the other hand learned counsel for respondent No.1 has placed reliance on the judgment of this court in the case of **Balmukund Singh Gautam Vs. Smt. Neena Vikram Verma** as reported in 2015 (IV) MPJR 317, wherein it is held that notices are to be issued during trial and when a particular witness is examined, who deposes against a particular person involving him in commission of corrupt practices, then the person should be given an opportunity to cross examine the witnesses. Accordingly, it was directed that the persons who were named in the petition and against whom the evidence has been adduced alleging them to be guilty of corrupt practices need to be given notices. In view of such judgment, he submits that without issuing notices to the Publisher/Printer of the posters/pamphlets/ calendars, no effective proceedings can be drawn against the Publisher/Printer.

26. In view of such submissions, it is necessary to examine the provisions contained in Section 99 of the R.P. Act, which are reproduced hereinbelow :

"99. Other orders to be made by the High Court .— (1) At the time of making an order under section 98 the High Court shall also make an order—

(a) where any charge is made in the petition of any corrupt practice having been committed at the election, recording—

(i) finding whether any corrupt practice has or has not been proved to have been committed at election, and the nature of that corrupt practice; and

(ii) the names of all persons, if any, who have been proved at the trial to have been guilty of any corrupt practice and the nature of that practice; and]

(b) fixing the total amount of cost payable and specifying the persons by and to whom costs shall be paid:

Provided that a person who is not a party to the petition shall not be named in the order under sub-clause (ii) of clause (a) unless—

(a) he has been given notice to appear before the High Court and to show cause why he should not be so named; and

(b) if he appears in pursuance of the notice, he has been given an opportunity of cross-examining any witness who has already been examined by the High Court and has given evidence against him, of calling evidence in his defence and of being heard.

(2) In this section and in section 100, the expression "agent" has the same meaning as in section 123."

27. Thus, it is apparent that at the conclusion of the trial of the election petition at the time of making an order under Section 98, the High Court is required to make an order to give the names of all the persons, if any, who have been

proved at the trial to have been guilty of any corrupt practice and the nature of that practice; and it is further provided that a person who is not a party to the petition shall not be named in the order under sub-clause (ii) of clause (a) unless—he has been given notice to appear before the High Court and to show cause why they should not be so named.

28. Thus, it is apparent that the requirement of Section 99 is that no person shall be named to be guilty of corrupt practice if he is not a party to the election petition even if there is evidence against him at the trial that he was guilty of any corrupt practice.

29. In the present case, there is neither any charge nor any evidence of publisher/printer indulging in any corrupt practice as defined under Section 123 of the R.P. Act. Such a charge of indulging in any corrupt practice has been made against respondent No.1 and his election agent in terms of the provisions contained in sub-section (3) of Section 123 of the R.P. Act. Further, the submission of the learned counsel for respondent No.1 that such publisher or election agent should have been made a party to the election petition is concerned, and as was submitted by the learned counsel for respondent No.1 on 14.3.2016 at the time of cross examination of P.W.1 – election petitioner and was rejected by the court is concerned, Section 82 of the EP Act provides for parties to the petition and it provides for impleading of all the contesting candidates as party where declaration for himself or any other candidate to be duly elected is sought and in other cases where no such further declaration is claimed and only declaration is sought that election of returned candidate is void, then all the returned candidates are to be impleaded as party. Section 82 (b) provides for impleading any other candidate as party against

Whom allegations of any corrupt practice are made in the petition. Admittedly, publisher/printer was not a candidate to the election. The requirement of Section 99 is not to give names and address of such persons, who committed corrupt practice but the requirement given under Section 99 (1) (a) (ii) of the R.P. Act is to give names of all persons who have been proved at the trial to have been guilty of any corrupt practice. It is relevant to mention here that the names have already been mentioned in para 18 of the petition. Besides this, name and address of respondent No.1 is mentioned in the cause title and that of his election agent Sachin Vatsa in para 5 of the election petition. Therefore, it can not be said that election petition does not contain names and address of the persons, against whom there are allegations of corrupt practice for respondent No.1. Therefore, in view of the aforesaid facts, issue No.(vii) is also decided in negative and it is held that even in absence of giving names and address of the persons in the array of respondents, who committed corrupt practice, election petition is maintainable, inasmuch the law laid down in the case of **Balmukund Singh Gautam (supra)** will come into force only when a finding has been recorded by the High Court as to somebody being guilty of any corrupt practice and if such person is to be named in the order.

30. Issue No.(viii) deals with proper verification of the election petition. Learned counsel for respondent No.1 has argued that election petition has not been properly verified. He has drawn attention of this Court to the pleadings in the election petition. In para 18 of the election petition, name of one Ramsajeevan Sharma is mentioned as election agent. He submits that since the pleadings have been verified giving the name of Ramsajeevan Sharma and not of Rajeev Nayan who was actu-

ally the election agent of the petitioner, it cannot be said that pleadings have been verified properly. In this regard, he has placed reliance on the judgment of Kerala High Court in the case of **P.C. Joseph Vs. P.C. George & Ors.** as reported in **AIR 2017(NOC) 590 (Kerala)** wherein it has been held that full particulars of corrupt practices alongwith date and place of its commission if not pleaded, election petition is not maintainable. Learned counsel for respondent No.1 has also placed reliance on the judgment of the Supreme Court in the case of **Arikala Narasa Reddy Vs. Venkataram Reddy & Anr.** as reported in **AIR 2014 SC 1290** which deals with the issue of recounting of votes, and has therefore, no direct application to the facts of the present case. As far as ratio of **P.C. Joseph (supra)** is concerned, that too is not applicable inasmuch as it is not the case of the respondent No.1 that the allegations made in the election petition do not give full particulars of the alleged corrupt practice. It is basically submitted that petitioner had an option of amending the pleadings and correcting the name from Ramsajeevan to Rajeev Nayan, but since that has not been done and affidavit enclosed with the petition does not bear signature below the verification, therefore, this petition is not maintainable and is likely be dismissed for want of proper verification.

31. Learned counsel for the petitioner on the other hand submits that in the return filed by respondent No.1 there is no averment in regard to mentioning of incorrect name of the election agent, and therefore, in view of there being no pleading in regard to incorrect name of the election agent being mentioned in paragraph 18 of the petition, it cannot be said that petition will not be maintainable. He further submits that in fact the name of Ramsajeevan is qualified with the

Words election agent of the petitioner and since Rajeev Nayan was the election agent of the petitioner, which is an admitted position, typographical error will not come in the way of election petitioner. Further, he submits that as far as verification is concerned, this issue has already been decided vide I.A.No.2492/14 which was decided on 4.7.2014. It is apparent that there is no reply. He further submits that provisions of Order 8 Rule 5 CPC will be applicable to the election petition as well and Rajeev Nayan (PW-9) in para 8 has clearly mentioned that such typographical error were not within his knowledge and he was election agent of Radheshyam Dhakad, therefore, merely mentioning of wrong name will not change his role and name. In view of such submissions, it is apparent that since there is no mention of this error which had crept in para 18 of the election petition in regard to name of the election agent, it cannot be said that verification has been rendered incorrect inasmuch as the typographical mistake is prefixed with the words election agent and is not so fatal so to render the whole petition liable to be dismissed. As far as format of verification is concerned, it is since in terms of the provisions contained in 94 A of the Conduct of Election Rules, 1961 which prescribes form 25 under the said rules, no fault can be attributed to such affidavit. Even otherwise, this issue has been dealt with by the Court vide order dated 4.7.2014 and it has been held that failure to comply with the requirement as to filing of an affidavit cannot be a ground for dismissal of election petition in *limine* under Section 86 of the R.P.Act. Non-compliance of the provisions of Section 83 of the Act, however, does not attract the consequences envisaged by Section 86 of the R.P. Act. Therefore, in the opinion of this Court since this issue has

already been settled, it cannot be said that election petition is not properly verified, therefore, this issue is decided accordingly.

32. Issue No.(ix) deals with whether petitioner has intentionally not disclosed the result of his complaint filed before the SDM, Raghogarh. Petitioner has enclosed copy of his complaint addressed to the SHO, police Station, Raghogarh, Distt. Guna, as Ex.P/6. Alongwith Ex.P/6, other complaints have been enclosed which are respectively addressed to Chief Election Officer, Bhopal, Chief Election Commissioner, New Delhi, District Election Officer, Distt. Guna, and the Observer for 031 Legislative Assembly Constituency Raghogarh, Distt. Guna, but no complaint addressed to Sub-Divisional Magistrate Raghogarh Distt. Guna has been enclosed by the petitioner. As far as respondent No.1 is concerned, respondent No.1 has also filed as Annexure R/1 copy of communication made by SDO(P) Raghogarh to Returning Officer dated 22.11.2013, whereby he had found the complaint to be baseless. Placing reliance on this communication, issue No.(ix) has been framed, but it is apparent that there was no complaint made before the Sub-Divisional Magistrate, Raghogaryh. In fact, Ex.D/1 has been marked only on the complaint which was made by the election agent of the petitioner to the SHO, police Station, Raghogarh and not on any other complaint, therefore, this issue which deals with intentionally non-disclosing the result of the complaint filed before the Sub-Divisional Magistrate, Raghogarh, appears to be superfluous. Further, the counsel for the petitioner submits that there is a specific pleading in para 15 of the election petition in regard to the fact that his election agent had moved an application dated 28.12.2013 before the Sub-Divisional

Magistrate, Raghogarh, in order to obtain certified copy of the election related documents of the constituency to further know about the status of the complaint. It is surprising to observe that Shri Abhishek Dubey, Sub-Divisional Magistrate, Raghogarh, cum Returning Officer of the Constituency went on leave on 28.12.2013 and since then he did not join till drafting of the petition on 19.1.14. Thus, the outcome of the complaint or any other facts which could have been pleaded on perusal of the record is not pleaded in the election petition, therefore, a liberty was sought to bring on record more documents or to insert additional pleadings in order to substantiate or for explaining the pleadings made herein above. A perusal of the record reveals that it is surprising that even without knowing the result of the complaint made by the petitioner, he has filed election petition and it is highly impossible that after making complaint, petitioner did not obtain result from the Returning Officer. It is also mentioned that Sub-Divisional Magistrate himself does not give certified copy. For that purpose, clerical staff is authorized to provide certified copy on demand. It is denied that Sub-Divisional Magistrate, Raghogarh, was on leave since 28.12.2013 till filing of the petition. In view of this reply, it is apparent that firstly respondent No.1 was required to prove that any complaint was made to the Sub-Divisional Magistrate, Raghogarh, and secondly he was required to bring on record that Sub-Divisional Magistrate, Raghogarh was not on leave since 28.12.2013. But there is no such office record. Further, there is no record to show that in absence of Sub - Divisional Magistrate, Raghogarh, the clerical staff was authorized to process the application seeking information and provide information as was sought by the election petitioner. Even Annexure R/1 which has been written by the SDO(P)

does not bear any endorsement to the petitioner or his election agent though the said reply was in response to the communication of the Returning Officer dated 21.11.2013. Besides this, there is no material on record to show that Sub-Divisional Magistrate, Raghogarh, or the Returning Officer had ever forwarded reply of the complaint to the petitioner, therefore, it cannot be said that there is sufficient material to attribute intentional non-disclosure of result of his complaint by the petitioner. Thus, on the basis of surmises and conjectures, this issue cannot be decided in favour of respondent No.1 and since respondent No.1 has failed to produce any material to show intentional non-disclosure of result of his complaint by the petitioner, this issue is also decided that there was no intentional non-disclosure of the result on the part of the petitioner having any effect on the outcome of this election petition.

33. As far as issues No.(i) to (iii) are concerned, they are being taken up now inasmuch as after deciding preliminary issues, this Court is of the opinion that since election petition is maintainable, therefore, merits of the election petition as are the subject matter of issues No.(i) to (iii) are to be examined. Issue No.(iv) will be consequential to the findings recorded in relation to issues No.(i) to (iii), therefore, after deciding first three issues, issue No.(iv) will be taken up.

34. Learned counsel for the petitioner has submitted that as per the provisions contained in Model Code of Conduct, there has to be no appeal to caste or communal feelings for securing votes. Mosques, Churches, Temples or other places of worship were not to be used as forum for election propaganda. He submits that since respondent No.1 and his election agent have violated these provisions of Model Code of

Conduct, therefore, their act constitutes corrupt practices as is provided under Section 123(3) of the R.P.Act, which provides that no appeal shall be made by a candidate or his agent or any other person with the consent of a candidate or his agent to vote or refrain from voting for any person on the ground of his religion, race, caste, community or language or the use of, or appeal to religious symbols. Learned counsel for the petitioner submits that he would like to confine his submissions to violation of the provisions contained in Section 123(3) in regard to appeal on the ground of religion and religious symbols. He submits that since 96% of the voters were Hindu, therefore, use of calendars as are contained in Ex.P/3, Ex.P/4 and Ex.P/5 alongwith the photograph of respondent No.1 reveals that such calendars were distributed with a view to appeal Hindu voters to vote for respondent No.1 in the name of religion and by showing religious symbols. He submits that he has led evidence in regard to such allegations and has categorically mentioned in his election petition that one Shri Mangilal son of Kamarlal Mali resident of Salota had received calendar on 12.11.13 from the supporters of INC. Similarly, Rakesh Khatik son of Shri Laxminaryan resident of village Barsat had received calendar on 14.11.13. On 16.11.13 Shri Bhagwanlal Mair son of Kishanlal Mair resident of village Meepur also received the calendar with the same suggestion that constituency of respondent No.1 shall not be short of money as respondent No.1 has blessings of Goddess Laxmi. Similarly, one Shri Dhansingh Baghele son of Shri Shyamlal Baghele resident of village Donger was given calendar on 17.11.2013. It is also mentioned that such calendars were hanged at places which are visible to general public mostly at the entrance of temple area where God statues are placed.

List of such temples are reproduced above. It is also mentioned that on 19.11.2013 respondent No.1 had conducted a public meeting at village Jamner which was attended by Shri Sagar Singh Dhakad son of Ganpatlal Dhakad and Shri Jaidev Saini son of Shri Kani Rama Saini and respondent No.1 and his election agent instructed their supporters to circulate the calendars with the suggestion that they should vote for respondent No.1 as he is Hindu and is blessed by Goddess Laxmi. On 20th November, 2013 respondent No.1 conducted public meeting at village Aron and after meeting supporters of respondent No.1 on his prompting circulated the calendars and pamphlets which was witnessed by Harpal Singh Yadav (PW-6) and Shri Narayan. Similarly, this incident was witnessed at village Ruthiyai by Shri Govind (PW-3) son of Shri Chironjilal. According to the petitioner, he had moved an application before the SHO, police Station, Raghogarh, through his election agent and two other authorities as well. He submits that he has proved these annexures in his cross-examine and has categorically mentioned in para 46 of his cross-examine that such calendars were distributed to influence Hindu voters. In para 50, he has categorically mentioned that he had asked his election agent Rajeev Sharma to collect the information and he had collected the information that such calendars were printed and published from Bhopal. This fact of calendars being printed at Bhopal has been supported by the petitioner, election agent Rajeev Nayan Sharma (PW-9) in his cross-examination and has placed reliance on the judgment of the Supreme Court in the case of **Muddasani Venkata Narsalah Vs. Muddasani Sarojana** as reported in (2016) 12 SCC 288 and submits that there is no specific denial to the allegations made in the election petition by respondent No.1 and it is

settled law that denial for want of knowledge is no denial at all. It is also submitted that respondent No.1 in his cross-examination has failed to put up his own version, and therefore, there was no effective cross-examination made on the plaintiff's witnesses to deny the allegations of corrupt practice. He further submits that the party is obliged to put his case in cross-examination of witnesses of opposite party. The rule of putting one's version in cross-examination is one of essential justice and not merely technical one. Therefore, he submits that since there is no effective cross-examination to deny the allegation, therefore, the allegation of corrupt practices stood proved. He has also submitted that even respondent No.1 in his cross-examination para 11 has admitted that material was supplied to respondent No.1 from Bhopal, and therefore, in view of such admission, corrupt practice is made out. He submits that there was consent of respondent No.1 in showing the religious symbol, and therefore, the allegation of corrupt practice has been fully established inasmuch as respondent No.1 was seen by the petitioner and his election agent hanging the calendars and seeking votes in the names of Hindu God and Goddess. He further submits that original calendar was since produced during the cross-examination of one of the witnesses, it cannot be said that non-filing of original calendar was fatal to the case of the petitioner inasmuch as photograph of the calendar was filed alongwith the petition and its original was produced during the course of cross-examination, therefore, Sagar Singh's (PW-7) statement remains uncontroverted and all the ingredients of Section 123 stood proved. He further submits that respondent No.1 has produced all the witnesses who have been associated with the Congress party and has since not

produced any independent witness in support of his contention, their testimony is not of much importance. In this regard, he has placed reliance on the judgment of Supreme Court in the case of **P.C. Thomas Vs. P.M. Ismail and others**, as reported in (2009) 10 SCC 239 wherein it has been held that charge of corrupt practice is to be equated with criminal charge and the proof required in support thereof would be as in a criminal charge and not preponderance of probabilities, as in a civil action but proof "beyond reasonable doubt. He submits that it is equally well settled that while insisting upon the standard of proof beyond a reasonable doubt, the Courts are not required to extend or stretch the doctrine to such an extreme extent as to make it well nigh impossible to prove any allegation of corrupt practice. Such an approach would defeat and frustrate the very laudable and sacrosanct object of the Act in maintaining purity of the electoral process. Thus, placing reliance on this judgment, he submits that he has been able to make out a ground under Section 100(1)(b) of corrupt practice being committed by respondent No.1 and his election agent and other persons with the consent of respondent No.1 and his election agent and since respondent No.1 is guilty of such corrupt practice and had admittedly not taken reasonable means for preventing commission of corrupt practice as is the requirement under Section 100(2)(c) of the R.P. Act, and therefore, he is entitled to the reliefs as are provided under Section 84 of the R.P. Act.

35. Learned counsel for respondent No.1 has submitted that there has been no contravention of the provisions of Section 123(3) of the R.P. Act and respondent No.1 or his election agent or any other person was not guilty of showing of religious symbols for furtherance of the prospects of the

election of respondent No.1. He further submits that respondent No.1 never used temple or other places of worship as forum for election propaganda and in fact submits that petitioner has filed all stereo type affidavits which do not prove anything. He has drawn attention of this Court to para 16 of the cross-examination of Rajeew Nayan Sharma (PW-9) wherein he admitted that all the affidavits which have been filed in this case were prepared as per the version of the authors and the advocate at Jabalpur by Mr. Awasthy and none of them has been sworn at Jabalpur. He further submits that no date has been mentioned in para 21 of the affidavit under Order 18 Rule 4 CPC produced by PW-1 showing that when the material was received by Virendra Tiwari. He further submits that as per PW-1, election petitioner, calendars were hanged on 19.11.13 but in para 40 of his cross-examination he stated that calendars were hanged on 12.11.13 but did not made any complaint in this regard. He submits that such conduct of the petitioner that he had intimation of such corrupt practice being followed by respondent No.1 was not reported to the Election Commission before declaration of the election result. He submits that there are no pleadings in regard to swearing in in the name of Hinduism and further placed reliance on Ex.D/1 which is complaint to the SDO(P) in which there is no mention of any date on which such calendars were distributed and the chronology of events as has been mentioned by the petitioner to have taken place on various dates starting from 12.11.13 to 20.11.13. Thus, in absence of there being any chronology of events mentioned in the complaint, Ex.D/1, such complaint was not maintainable and has been rightly rejected by the SDO(P) vide his report Ex.R/1. He has drawn attention of this Court to several contradictions which respondent No.1 could

bring out in the cross-examination of the petitioner and submits that though the petitioner had seen the calendars for the first time on 12.11.13 but he admitted in para 40 of his cross-examination that he had not made any complaint in regard to viewing of the calendars on 12.11.13. He further submits that in para 42 of his cross-examination petitioner has submitted that he and his driver had seen hanging of the calendars in the temple, but petitioner has not examined his driver Bhaiyalal resident of Achkalpur who could have been a best witness. In para 46 petitioner has admitted that in the said calendars there is no mention of seeking votes to respondent No.1 and further admitted in para 52 of his cross-examination that he had not informed the election officer in his complaint that such calendars were printed at Bhopal. He further admitted in para 58 of his cross-examination that from the photographs, Ex.P/4, Ex.P/5 to Ex.P/8, it is not apparent that in which of the temples said material was displayed. He has drawn attention of this Court to paragraph 65 of the cross-examination wherein petitioner has admitted that distribution of calendars/pamphlets in the legislative assembly was intimated to him by Rajesh Singh Dhakad, respondent No.3, but Rajesh Singh Dhakad was also not examined in favour of the petitioner. He further submits that in paragraph 75 of the cross-examination there is a contradiction inasmuch as earlier petitioner had submitted that he had himself seen respondent No.1 and his agent distributing the calendars on 19.11.13 as is apparent from his deposition in para 44 of the cross-examination made on behalf of respondents No.3 and 4, whereas in para 75 he has admitted that he had not seen respondent No.1 and his agent distributing the calendars and he was informed about this fact by the persons of the constituency. Thus, he submits that

petitioner has given this information which will come within the meaning of hearsay evidence. He also admitted in paragraph 78 that he has not mentioned anything in his complaint, Ex.D/1, that he had seen Jaywardhan Singh and Sachin Vats pasting calendars and pamphlets. He also admitted that he is not in a position to explain whether his election agent had taken information in regard to the expenses which were incurred on printing of the calendars/ pamphlets. It is also submitted that no report was made to the Observer and no use of technology was made which provides for making complaints through website and to the call center. Even there was a provision for making complaint by SMS, but that too was not resorted to. It is also submitted that petitioner had never ever obtained copies of the videography to substantiate the allegations of corrupt practices though all such major events were videographed in terms of Ex.P/2 (paragraph 11). It is also submitted that Ex.P/6 though makes mention of enclosing the list of temples where such corrupt practice had taken place, but no such list has been enclosed. In para 92 of his cross-examination he admitted that he is not in a position to inform who had seen respondent No.1 and his election agent affixing /distributing calendars.

36. Learned counsel for respondent No.1 has also drawn attention of this Court to the cross-examination of Virendra Tiwari (PW-2) to point out that in para 16 of his cross - examination he admitted that he has not read the election petition. He also admitted that contents mentioned in para 5 of his affidavit to the effect that " यह कि, उक्त दिनांक को प्रतियाचिकाकर्ता क.1 ने नगर राघौगढ में एक आमसभा आयोजित की जिसमें शपथकर्ता उपस्थित था उक्त आमसभा के पश्चात प्रति याचिका क.1 व उसके निर्वाचन अभिकर्ता ने उनके कार्यकर्ताओं को उक्त कैलेंडर एवं पम्पलेट जिसमें हिंदु देवी देवताओं के साथ प्रतियाचिकाकर्ता क.1

का चित्र है को मतदातागणों को बांटने का निर्देश मेरे समक्ष दिए एवं प्रतियाचिकाकर्ता क. 1 व उनके अभिकर्ता श्री सचिन वत्स द्वारा वोट यह कहते हुए मांगे गए कि जैसा कलेण्डर में दिख रहा है उसकी तरह प्रतियाचिकाकर्ता क.1 निर्वाचन क्षेत्र के रहवासियों को माता लक्ष्मी जी, सरस्वती जी, गणेश जी का आशीर्वाद लेकर आयेगें एवं उनके आशीर्वाद से दिवाली जैसी धन वर्षा होगी" were not correct. He has also drawn attention to para 14 of cross-examination of Hargovind (PW-3) in which he admitted that he is not aware of the documents which have been enclosed as Ex.P/4 and Ex.P/5. He also admitted that he is not aware as to how contents of para 3 from "c" to "c" part have been recorded. Learned counsel for respondent No.1 has also drawn attention of this Court to the statement of Santosh Dhakad (PW-4) who in para 10 has deposed that he had clicked the photos alone and nobody else was with him, whereas this statement is contradictory to the statement of election petitioner. Learned counsel further submits that petitioner has not examined any of the Pandit/ Pujari (Priest) of the temple in support of his contention and there is no pleading in the election petition that Santosh Dhakad had taken photographs, therefore, whatever has not been pleaded cannot be substantiated by way of evidence.

37. To substantiate the contradiction in the statement of Santosh Dhakad, learned counsel has drawn attention of this Court to para 2 of cross-examination of Rajeev Nayan (PW-9) wherein he admitted that photographs were taken in his presence by Shri Santosh Dhakad. Thus, pointing out towards the contradiction, learned counsel for respondent No.1 submits that these photographs have been concocted and do not reveal true and correct picture of commission of any corrupt practice. He has further drawn attention to the fact that no complaint was made to the Election Commission against the said Printer/publisher and no relief has been sought in the

election petition against the said Printer/publisher. In para 14 of his cross-examination Rajeev Nayan Sharma (PW-9) admitted that they had not examined any Puja of any temple to give statement to the police authorities. In para 16 of his cross-examination, Rajeev Nayan Sharma (PW-9) admitted that the dates which are mentioned in his affidavit are on the basis of diary of Radheshyam Dhakad, but no such diary was ever presented before the Court. Learned counsel for respondent No.1 has also pointed out from the cross-examination of Pappulal (PW-10) that how tutored witnesses have been produced before the Court inasmuch as in para 2 of his cross-examination, Pappulal admits that he had not prepared any other document except the affidavit and then he submits that election petition is in Hindi. Then he corrected his stance and stated that he has nothing to do with the election petition and he had only given affidavit. In para 3 of his cross-examination, he admitted that he does not understand the meaning of word 'परिसंचालित' because he is not educated. He also showed his inability to explain as to how E.P/4 and E.P/5 has been mentioned in his affidavit.

38. Similarly, learned counsel has drawn attention of this Court to the evidence of Harpal Singh (PW-6) who has admitted that there is no appeal to vote for a candidate in Annexure R-3/D-1. He further submits that this witness has deposed in para 6 of his cross-examination that on 20.11.13 only he had informed the petitioner that he shall give statement in favour of the petitioner. Thus, it is apparent that this witness is a tutored witness inasmuch as voting took place on 25.11.13 and results were declared on 8.12.13, and therefore, this witness could not have informed the election petitioner on 20.11.13 that he shall give statement in favour of the petitioner.

Similarly, learned counsel has drawn attention of this Court towards the cross-examination of Sagar Singh (PW-7) son of Ganpatlal wherein in para 1 of his cross-examination he has admitted that the incident is of the time close to Nav Durga. He submits that at the time of Nav Durga election notification was not issued, and therefore, the petitioner's own witness has since admitted that calendars were distributed prior to election notification, no corrupt practice can be attributed. Similarly, he has drawn attention to para 3 of his cross-examination wherein this witness has admitted that whatever is mentioned in the affidavit was at the instance of the lawyer and he had only signed the affidavit. He admitted that he had not given the contents of the affidavit. Same fact has been repeated in para 4 of the cross-examination that he is not aware of the contents of the affidavit and is not aware whether they are correct or false.

39. Learned counsel for respondent No.1 has drawn attention of this Court to the cross-examination of Hanumant Singh (DW-1) in the hands of the petitioner and submits that there is no suggestion as to any corrupt practice except in question No.11 which has been categorically denied in the following terms

"11. मैंने जयवर्धन सिंह के चुनाव प्रचार में कमी भाग नहीं लिया।
प्रश्न— क्योंकि आपने जयवर्धन सिंह के चुनाव में भाग नहीं लिया
इसलिए आप यह नहीं कह सकते कि उन्होंने देवी-देवताओं के नाम पर
वोट मांगे ?
उत्तर— मैंने उस दौरान न ऐसा देखा न सुना।"

He further submits that there is no cross-examination on the allegation of corrupt practice on Smt. Rajkumari Gurjar (DW-2), Pratap Singh (DW-3), Tilak Singh Meena (DW-4). Ramcharan (DW-5) has specifically stated in para 8 of his cross-examination that Jaywardhan Singh visited only once and he never visited again. He categorically submits that he is not in a

Position to say that how Jaywardhan Singh sought votes. Similarly, Hafij Khan (DW-6) in para 9 has categorically denied the suggestion that Jaywardhan Singh sought votes in the name of Hindu God and Goddess. He further submits that even to Sachin Vats (DW-7) no documents were shown as were exhibited by the petitioner and there was no suggestion to him that such calendars and pamphlets were distributed from one house hold to another house hold. In para 15 of his cross-examination, he denied the suggestion that at the instance of Jaywardhan Singh pamphlets and calendars were pasted at different temples. He also denied the suggestion that votes were sought in the name of Hindu God and Goddess. He submits that in para 4 Jaywardhan Singh (DW-8) has categorically denied distribution of calendars and pamphlets etc. and also denied seeking votes in the name of Hindu God and Goddess. He has drawn attention to the cross - examination of DW-8 i.e. respondent No.1 who in para 10 has categorically denied fixing of photographs and pamphlets of God and Goddess in the temple premises. He has again drawn attention to Ex.R/1 which is the report of the SDO(P) in which he has found the complaint (Ex.D/1) to be false and concocted. He also denied distribution of calendars by himself and his election agent. in para 16 of his cross-examination.

40. Learned counsel for respondent No.1 has placed reliance on the judgment in the case of **Pradumn Singh and others Vs. Shivraj Singh** as reported in ILR 2014 MP 424 wherein it has been held that affidavit prepared by the counsel and the witnesses merely signing it, it can be inferred that statement produced on behalf of the witnesses is not his actual statement. This judgment has been referred to in relation to the cross-examination of various petitioner witnesses who in

majority admitted that they had signed the affidavits as per the dictates of the lawyer and were not aware of the contents in the affidavit.

41. Learned counsel for respondent No.1 has also placed reliance on the judgment of the Supreme Court in the case of **D. Venkata Reddy Vs. R. Sultan and others** as reported in **AIR 1976 SC 1599**. He has attention to para 4, 5, 6, 7, 32 and 62 of the said judgment to point out that election petitioner in order to succeed must plead all material particulars and prove them by clear and cogent evidence. The allegations of corrupt practices being in the nature of a quasi-criminal charge the same must be proved beyond any shadow of doubt. Where the election petitioner seeks to prove the charge by purely partisan evidence consisting of his workers, agents, supporters and friends, the Court would have to approach the evidence with great care and caution, scrutiny and circumspection, and would, as a matter of prudence, though not as a rule of law, require corroboration of such evidence from independent quarters, unless the Court is fully satisfied that the evidence is so credit-worthy and true, spotless and blemishless, cogent and consistent, that no corroboration to lend further assurance is necessary. It is further held that even if evidence led by the election-petitioner, though consistent, is fraught with inherent improbabilities and replete with unnatural tendencies, the court may refuse to accept such evidence, because consistency alone is not the conclusive test of truth. Reliance has also been placed on the judgment of the Supreme Court in the case of **Bhanu Kumar Shastri v. Mohan Lal Sukhadia and others** as reported in **AIR 1971 SC 2025** wherein it has been observed that the genuine and bona fide aims and aspirations of candidates have to be protected on the one

hand and mala fide abuse and arrogance of power will have to be censured on the other. Quoting from the judgment rendered by Supreme Court in the case of **Rahim Khan v. Khurshid Ahmed and others** as reported in AIR 1975 SC 290 Krishna Iyer, J. observed "An election once held is not to be treated in a light hearted manner and defeated candidates or disgruntled electors should not get away with it by filing election petitions on unsubstantial grounds and irresponsible evidence, thereby introducing a serious element of uncertainty in the verdict already rendered by the electorate." In the case of **D. Venkata Reddy (supra)** the Supreme Court was further pleased to quote from its earlier decision in the case of **Abdul Hussain Mir. V. Shamsul Huda** as reported in AIR 1975 SC 1612 in the following terms:-

"Even so, certain basic legal guidelines cannot be lost sight of while adjudging an election dispute. The verdict at the polls wears a protective mantle in a democratic polity. The Court will vacate such ballot count return only on proof beyond reasonable doubt of corrupt practices. Strong testimony is needed to subvert a Returning Officer's declaration."

He further submits that a Judge cannot apply different yardsticks for appreciating the evidence. In para 32, the Supreme Court has held that in fact on the allegations of contesting respondent, publication of pamphlets containing communal propaganda would also attract sub-Section 3(A) of Section 123 of the Act. The allegation of publishing an objectionable pamphlet is indeed very easy to make but very difficult to rebut. At the same time it puts the 'Court on the' strictest possible scrutiny because objectionable pamphlet can be printed by any body in any Press with utmost secrecy and if a corrupt practice can be sought to be proved merely by

publication of a pamphlet then it will amount to giving a free licence to any defeated candidate to get an objectionable pamphlet published and circulated to his supporters and to make them say that such pamphlet was printed or published or circulated by the successful candidate.

42. Learned counsel for respondent No.1 has also placed reliance on the judgment of the Supreme Court in the case of **Quamarul Islam Vs. S.K.Kanta and others** as reported in **1994 AIR SCW 1598** specifically para 41 to 57. In para 41, the Hon'ble Supreme Court has held that after rejection of the IA after the parties had gone to trial, despite the absence of full facts and particulars of the alleged corrupt practice and had led evidence, an election petition is not liable to be thereafter dismissed for those defects only but in such cases, the evidence that is required to prove the allegations of corrupt practices in an election petition has to be more strictly scrutinized, lest the evidence, which in a way travels beyond the pleadings, is accepted without proper analysis. Similarly, in para 57 the Hon'ble Supreme Court has held that learned trial Judge fell in error, even without going into the question of admissibility of cassette Ex.P/7, which, has been seriously disputed by Mr. Sibal in view of the denial by the returned candidate that the voice in the cassette was his, to rely upon this piece of evidence and to hold on the basis thereof, that the appellant was guilty of committing corrupt practices covered by Sections 123(2), (3), 3(A) of the Act. The Court held that the cassette was not a reliable piece of evidence and was ruled out of consideration. Thus, placing reliance on this judgment, learned counsel for respondent No.1 submits that the way calendars and posters were exhibited cannot be approved of and is not acceptable in evidence as proof of any corrupt

practice in the hands of respondent No.1.

43. Learned counsel for respondent No.1 has also placed reliance on the judgment of the Hon'ble Supreme Court in the case of **Ram Singh and others Vs. Col. Ram Singh** as reported in **AIR 1986 SC 3**, wherein Hon'ble Supreme Court has held that when two views are possible; one in favour of elected candidate and other against him, then possibly election should not be declared void. He has placed reliance on paras 1,2,3 and 222 of the aforesaid judgment. In para 1, Hon'ble Supreme Court has held that one who loses the election from a particular constituency, makes out on the surface such a probable feature and presents falsehood dexterously dressed in such a fashion as the truth being buried somewhere deep into the roots of the case so as to be invisible, looks like falsehood which is depicted in the grab of an attractive imposing and charming dress as a result of which some courts are prone to fall into the trap and hold as true what is downright false. If, however, the lid is carefully opened, and the veil is lifted, the face of Falsehood disappears and truth comes out victorious. Similarly, in para 2, it has been held that in such cases the judicial process and the judicial approach has to be both pragmatic and progressive so that the deepest possible probe is made to get at the real truth out of a heap of dust and cloud. In para 3, Supreme Court has held that if two views are reasonably possible one in favour of the elected candidate and the other against him Courts should not interfere with the expensive electoral process and instead of setting at naught the election of the winning candidate should uphold his election giving him benefit of the doubt. This is more so where allegations of fraud or undue influence are made. In para 222 of the aforesaid judgment, reliance has been placed in the

case of **Ram Sharan Yadav Vs. Thakur Muneshwar Nath Singh and others** as reported in **AIR 1985 SC 24**, wherein the court has held that the charge of a corrupt practice is in the nature of a criminal charge which if proved, entails a very heavy penalty in the form of disqualification. Therefore, a very cautious approach must be made in order to prove the charge of undue influence levelled by the defeated candidate. It is for the party who sets up the plea of 'undue influence' to prove it to the hilt beyond reasonable doubt and the manner of proof should be the same as for an offence in a criminal case. However, while insisting on standard of strict proof, the Court should not extend or stretch this doctrine to such an extreme extent as to make it well-nigh impossible to prove an allegation of corrupt practice. Respondent No.1 has also placed reliance on the law laid down by the Hon'ble Supreme Court in the case of **Laxmi Narayan Nayak Vs. Ramratan Chaturvedi**, as reported in **AIR 1991 SC 2001**. Respondent No.1 has placed reliance on para 24 of the judgment which lays down the same ratio as has been quoted above in the case of **Ram Sharan Yadav (supra)** and further insisted that the losing candidate has to discharge the onus of proof cast upon him by adducing cogent, reliable and satisfactory evidence. If the evidence of the witnesses is inconsistent and contradictory, then it can not be said that charge of corruption has been made out. Learned counsel for respondent No.1 has also placed reliance on the judgment of the Supreme Court in the case of **Surinder Singh Vs. Hardial Singh and others** as reported in **AIR 1985 SC 89**, wherein Hon'ble Supreme Court placing reliance on a Larger Bench decision in the case of **Mohan Singh Vs. Bhanwarlal** as reported in **AIR 1964 SC 1366**, has held that the onus of establishing a corrupt practice is undoubtedly on the person

who sets it up, and the onus is not discharged on proof of mere preponderance of probability, as in the trial of a civil suit; the corrupt practice must be established beyond reasonable doubt by evidence which is clear and unambiguous." Respondent No.1 has also placed reliance on the judgment of the Hon'ble Supreme Court in the case of **Baldev Singh Man Vs. Surjeet Singh Dheeman** as reported in (2009) 1 SCC 633 to submit that the court should adopt a cautious approach and should take judicial notice that a candidate who has lost by a narrow margin would make all efforts and gather all kind of material against the elected candidate and level all kinds of allegations of corrupt practices whether substantiated or not. Thus, placing reliance on this judgment, it is being sought to be impressed that in a democratic country the will of the people is paramount and the election of elected candidate should not be lightly interfered with. At the same time, it is also the bounden duty and obligation of the court to ensure that purity of election process is fully safeguarded and maintained. He has also placed reliance on the judgment of the Hon'ble Supreme Court in the case of **Arikala Narsasa Reddy Vs. Venkata Reddy Reddygari** as reported in (2014) 5 SCC 312 to bring home the issue that the principle of equity is not applicable and the law in all its technicality will apply to preserve the purity of election, as has been the ratio laid down in para 7 of the aforesaid judgment.

44. Learned counsel for respondent No.1 has also submitted that since photocopies of the calendar were filed, therefore, in terms of the law laid down in the case of **Smt.J.Yashoda Vs. Smt. K. Shobha Rani** as reported in AIR 2007 SC 1721, the photocopies, in relation to which there is no possibility of being compared with original, as the same were

with another person, will not satisfy the conditions laid down in Section 65 (a) of the Evidence Act and therefore, document can not be accepted as secondary evidence. He has also placed reliance on the judgment of Rajasthan High Court in the case of **Rajasthan Golden Transport Company Vs. L.Rs. of Amritlal** as reported in AIR 1998 RAJ. 153, wherein plaintiff had produced photostat copies of alleged assessment order and had not given any notice to the witness to produce document in original nor any material showing that photostat copy was made from its original, therefore, court held that plaintiff could not have been permitted to produce said copy. Respondent No.1 has also placed reliance on the judgment of the Supreme Court in the case of **H.Siddiqui (D) by L.Rs. Vs. A Ramalingam** as reported in (2001) 4 SCC 240, wherein ratio is that if original documents are not produced at any time nor any factual foundation laid for giving secondary evidence, it is impermissible to allow a party to adduce secondary evidence. Reliance has also been placed on the judgment of the Hon'ble Supreme Court in the case of **Laxmi Raj Sheety and another Vs. State of Tamil Nadu** as reported in AIR 1988 SC 1274, wherein placing reliance on the judgment of the Supreme court in the case of **Samant N. Balakrishna Vs. George Fernandez** as reported in AIR 1969 SC 1201, it has been held that a newspaper report without any further proof of what had actually happened through witnesses is of no value. It is at best a second-hand secondary evidence. On the same issue, reliance has also been placed on the judgment of this court in the case of **Joginder Singh Pal Vs. Omprakash Gupta and others** as reported in 2010 (1) JLJ 417 to the point that if plaintiff admitted the fact of publication of magazine but denied contents mentioned in it, defendant is left with no

choice except to summon the maker of the document because without calling the maker of the document, the contents can not be proved in terms of the provisions of Section 61 and 67 of the Indian Evidence Act. Reliance has also been placed on the judgment of the Supreme Court in the case of **Subhash Maruti Avasare Vs. State of Maharashtra** as reported in (2016) 10 SCC 631, wherein it has been held that by mere filing of a document its contents are not proved. A certificate issued by an expert should be brought on record by examining him. Reliance has also been placed on the judgment of the Supreme Court in the case of **Sait Tarajee Khimchand and others Vs. Yelamarti Satyam Allas Satteyya and others** as reported in 1972 (4) SCC 562, wherein the ratio is that mere marking of an exhibit does not dispense with the proof of document.

45. In rebuttal, Shri Abhijit Awasthi, learned counsel for the petitioner submits that the judgment in the case of **Manohar Joshi (supra)** as has been cited by respondent No.1 is of no importance, inasmuch as issue in the case of **Manohar Joshi (supra)**, was different from the present issue. He submits that in that case interpretation was in regard to the word "Hindutva" by itself does not invariably mean Hindu religion and it is the context and the manner of its use which is material for deciding the meaning of the word "Hindutva" in a particular text. He submits that in the present case, larger connotation of the words "Hindutva" is not applicable but there is direct evidence as to the misuse of religion and religious symbol to seek votes and therefore philosophy of Hindutva being different will not help respondent No.1 to fine tune the differentiation between the philosophy and actual use of religion and religious symbol. He further submits that the argument of learned counsel for

respondent No.1 that no complaint was made to the returning officer and observer is of no consequence inasmuch as Annexure R/1 is addressed to the returning officer in reference to the letter of returning officer, dt.21.11.2013, therefore, it is apparent that there was a complaint addressed to the returning officer which was referred to the SDOP who had submitted reply vide Annexure R/1.

46. He further submits that typographical error in the name of the election agent will not defeat the case of the petitioner as is the ratio of the case of **Gore Lal Shakya Vs. Maharaj Singh Yadav** as reported in 1995 (Supp) 3 SCC 407. He has also placed reliance on the judgment of the Hon'ble Supreme Court in the case of **Jumua Prasad Vs. Lacchi Ram** as reported in 1995 (1) SCR 608, wherein the ratio is that only corrupt practice was required to be proved and its impact on the voter was irrelevant. It is submitted that since the petitioner has been able to prove the corrupt practice of distributing the calendars containing photographs of respondent No.1 alongwith Hindu Gods and Goddesses at the time of election, he has discharged his onus and nothing more was required to be proved. He has also submitted that lot of emphasis has been laid on not producing the videography which could have been obtained by the petitioner in terms of the provisions contained in Annexure P/2 but his submission is that it is apparent from the language of Annexure P/2 itself that videography was to be made of critical events and not of all the events. Therefore, videography being selective would not have captured everything on camera for proving the commission of corrupt practice as has been alleged. He also submits that merely because there are some contradictions in the oral testimony, that will not defeat the case of the petitioner as his

case stood proved on the basis of the documentary evidence. In view of such submission, he again prays for allowing the election petition and not only setting aside the election of respondent No.1, but also to declare the election petitioner as elected as per the provisions contained in Section 101 of the R.P. Act.

47. After hearing the arguments and going through the documentary as well as oral evidence, this court is of the opinion that as far as issue Nos. (i), (ii) and (iii) are concerned, they can be decided cumulatively as they all are inter related.

48. Adverting to the evidence, which has been produced by the parties in respect of use of material namely; calendars and pamphlets containing photographs of Gods and Goddess is concerned, it is though averred by the petitioner that such misuse has been made by the respondent No.1 and his election agent and further at their instance such material was distributed and in this regard petitioner has relied on Ex.P/3 to Ex.P/11 and has examined himself and as many as eight other witnesses in support of his contention but there is contradiction in the testimony in regard to proof of the allegations. Petitioner on one hand alleged that the said incident was seen by several voters between 01.11.2013 to 24.11.2013. He admits that on 12.11.2013 at village Salota, Mangilal had received such calendars on the instruction of respondent No.1 but the fact is that the said Mangilal has not been examined as a witness. Similarly, it is mentioned that on 14.11.2013, Rakesh Khatik had received calendars and pamphlets on the instruction of respondent No.1 and his agent but again Rakesh Khatik too has not been examined as a witness. It is alleged that on 19.11.2013 at village Jamner, respondent No.1 had taken an election rally and Sagar Singh Dhakad and Jaidev Saini were

present there. They received calendars and pamphlets containing photographs of Hindu God and Goddess on the instruction of respondent No.1 and his election agent but again Jaidev Saini has not been examined as witness and Sagar Singh Dhakad (P.W.7) in his cross-examination admitted that the incident happened at the time of Navdurga. He further admitted that the narrations in the affidavit filed by him under Order 18 Rule 4 of CPC were not as per his version and finally he admitted that he is not aware about the truthfulness or otherwise of the contents of the affidavit. Therefore, evidence of Sagar Singh Dhakad (P.W.7) is of no avail to the petitioner.

49. Thereafter, the petitioner has mentioned that on 20.11.2013 at village Aron, Harpal Singh Yadav and Narayan S/o Moharsingh Banjara had received such religious material. Similarly, at Ruthiyai, Hargovind Singh had received such material containing religious symbol. As far as Moharsingh Banjara is concerned, he has not been examined. Harpal Singh Yadav has been examined as P.W.6. He admits that the petition and the documents have been mentioned in his affidavit have not been read by him. He further submits that he is not aware as to the context in which Annexure EP/4 and EP/5 have been used though he produced the calendar Ex. R-3/D-1. He further admits that part 'A' to 'A' in para 3 of his affidavit to the effect that "Annexure EP/4 and EP/5 annexed alongwith the election petition were distributed by respondent No.1 and his election agent" was not written at his instance. Similarly, he admitted that calendar Ex.R-3/D-1 does not say that vote for me. He further admits that on 20.11.2013, he had informed Radheshyam Dhakad that he shall give statement in favour of him. Thus, it is apparent that when this witness P.W.6 had denied mentioning distribution of calendars at the instance

of respondent No.1 and his agent in his affidavit from para 'A' to 'A' in para 3, then the allegation of distribution of calendars does not stand and therefore testimony of Harpal Singh Yadav (P.W.6) is of no use to the election petitioner.

50. Similarly, Hargovind (P.W.3) admitted that he is not aware as to the nature of Annexure EP/4 and EP/5. He was also not in a position to give names of any other person, who was present at Ruthiyai election rally on 20.11.2013. Therefore, even his evidence loses credibility inasmuch as when the person who makes mention of Annexure EP/4 and EP/5 in his affidavit is not aware as to meaning and purport so also the reference in which Annexure EP/4 and EP/5 is used, which is collectively Ex.P/3 to P/11, then it can not be said that he is a reliable witness, who had seen the incident. This fact gets support from another aspect of the cross-examination that he was not in a position to reveal names of any other person, who was present.

51. In para 21 of his affidavit, election petitioner has mentioned names of Virendra Tiwari, SADA Colony, Raghogarh, Mansingh Dhakad of village Imliya, Surjeet Singh Dhakad of village Raipur Tahsil Aron, Pappulal Bheel of village Kudai Dang, Rajansingh Meena of village Choudakhedi, Sher Singh of village Raipur Tahsil Aaron, Sonu Raghuvanshi in village Aron Nagar, Gopal Bunkar of village Dhanavada and Sardarsingh Lodha of village Aavon. No date has been mentioned as to on which date such persons received said documents. Besides Virendra Tiwari (P.W.2) and Pappulal Bheel (P.W.10), no other person has been examined out of these witnesses. Virendra Tiwari (P.W.2) admits in his cross-examination that he is not aware as to on which date such calendars was distributed. He further admits that he has not

read the election petition. In para 21, he admits that the incident had taken place on 23.11.2013 and he had given intimation to the petitioner on 26.11.2013 but if date of such intimation is not mentioned in his affidavit, then he can not assign any reason for such omission. He further admits that no directions were issued for distribution of calendars and pamphlets in front of him but such material was distributed. In para 22 of his cross-examination, he admitted that contentions of para 5 of his affidavit from part 'B' to 'B' to the effect that respondent No.1 in his presence has instructed for distribution of such material is false. In view of such admission, this witness is also not supporting the evidence of the petitioner regarding distribution of calendars and pamphlets on the instructions of the respondent No.1 and his election agent.

52. Pappulal Bheel (P.W.10) in his cross-examination admitted that except for the election petition on his instruction no document was written. He avers that the election petition is in Hindi. Then he changed his version and said that he had no relationship with the petition and has only given one affidavit. He further admitted that he is not aware of the date on which except Sachin Vatsa, other candidates had visited his village for election campaigning. He also admits that he is not aware to the mentioning of Annexure EP/4 and EP/5 and how they have been mentioned in his affidavit. He further admitted that he had not visited Jabalpur for preparation of his affidavit; whereas Rajeev Nayan Sharma (P.W.9) in para 16 of his cross examination has admitted that all the affidavits in the case were prepared by their counsel Mr. Awasthy at Jabalpur and were notarized at Raghogarh. Thus, when Pappulal Bheel (P.W.10) categorically admits that he has not visited Jabalpur, then it is clear that his affidavit is not prepared as per his

instruction and therefore such affidavit can not be read in evidence.

53. Petitioner in his cross-examination in para 42 admits that he alongwith his driver Bhaiyalal had seen respondent No.1 hanging calendars at temple but Bhaiyalal has not been examined. He further admits that except for hanging calendars on 19.11.2013, he had not seen respondent No.1 distributing any material. In para 46, he admitted that there is no mention of appeal to caste vote on the calendars. In para 75 he has taken a somersault and admits that he had not seen Jaivardhan Singh and his election agent Sachin Vatsa distributing calendars/photographs Ex.P/9, P/10 and P/11 but he was only informed by the persons of his locality. He further admits that there is no mention of election symbol on Ex.P/9, P/10 and P/11. Though he admits that he was handed over such calendars and pamphlets by his supporters but he had not presented them to the SHO in the concerned Police Station. He further admits that the complaint was made after witnessing the incident by himself but there is no mention of any date or the fact that he had seen Jaivardhan Singh and Sachin Vatsa distributing calendars and pamphlets. In para 91 of his cross-examination he admits that he is not remembering the date on which he had seen Jaivardhan Singh and Sachin Vatsa pasting calendars because it is an old incident. In para 92, he admits that today he is not in a position to inform as to who had seen them pasting and distributing calendars. He had also failed to assign any cogent reason for not producing the videography.

54. Similarly, Santosh Dhakad (P.W.4) admitted that he had not read the election petition. He further admits in para 10 that he had taken photographs all alone and there was no other

person with him. This is contrary to the statement of Rajeev Nayan Sharma (P.W.9), who admitted that he had visited various temples alongwith Shri Santosh Dhakad for clicking the photographs. P.W.4 admitted in para 14 that he is not aware as to who had placed such calendars. He further admits that his affidavit was typed at Raghogarh, which is contrary to the statement of Rajeev Nayan Sharma (P.W.9). He further admits in para 15 that the statement mentioned in para 6 of the affidavit that "the objection taken by the defendant that the date was put later on with the help of the computer is incorrect" was mentioned at the instance of lawyer. He further admits that he has read the election petition and his name is not mentioned in the election petition.

55. Bhagwan Lal Mer (P.W.5) submitted that his affidavit was prepared at Bhopal and some of the writings of the affidavit are at his instance and some are at the instance of the lawyer. In para 15, he admits that he is not aware of Annexure EP/4 and EP/5, but admitted that there is no appeal to vote in the calendars. He further admits that he is not aware of the contents of the pamphlets. Rajeev Nayan Sharma (P.W.9) election agent of the petitioner contradicted the statement of Santosh Dhakad (P.W.4) in para 2 of his cross-examination and said that photographs were clicked by Santosh Dhakad in his presence. He in para 9 on one hand gave date of his visit to Bhopal and admitted that he has natural instinct to remember dates but failed to give the dates of last five occasions on which the case was listed before this court. He admits that there was no mention of his complaint made to the election observer in his affidavit. He further admitted that the statement of any of the Pujari of any temple where calendars/pamphlets were allegedly pasted was not adduced

before the court. He further admitted that the diary on the basis of which various dates have been mentioned has not been filed before the court. Thus, contradictions in his statement as to preparation of affidavit, as to his capacity to recall the dates and also the fact that no complaints were made to the election observer or to the authorities as are mentioned in Annexure EP/2 and also admission of witnesses of the petitioner that material was distributed close to Dashahara during Navratri, defeat the case of the petitioner, inasmuch as during Navratri model code of conduct was not applicable and at least there is no evidence on record to show that model code of conduct was applicable at that time.

56. Therefore, in view of such evidence as has come on record, it is apparent that the election petitioner has failed to discharge his burden to lead such evidence, which can be considered to be containing all material particulars and have been proved by cogent evidence, as has been held in the case of **D.Venkata Reddy (supra)**. There is also material to support that the affidavits were prepared by the counsel, as none of the witnesses has deposed that they visited Jabalpur, whereas as per Rajeev Nayan Shama (P.W.9), affidavits were prepared and merely signing the affidavits in the light of the law laid down in the case of **Pradumn Singh (supra)** will lead to an inference that the statement produced on behalf of the witnesses is not their actual statement. Similarly, in the light of the law laid down in the case of **Ram Sharan Yadav (supra)**, the charge of a corrupt practice being in the nature of criminal charge should be proved beyond reasonable doubt but this burden has not been discharged by the election petitioner. Therefore, in the light of the law laid down by the Hon'ble Supreme Court in the case of **Abdul Hussain (supra)**, there is

no sufficient material to vacate the mandate of the ballots returning respondent No.1 as a successful candidate. In fact, in the case of **Ram Singh (supra)**, it is view of the Hon'ble Supreme Court that even if two views are possible, one in favour of the elected candidate and other against him, then possibly election should not be declared void. In the present case, since petitioner has failed to lead any evidence to show that calendars and pamphlets were distributed after declaration of election programme and coming into force of model code of conduct to influence the voters in the name of religion and also there is preponderance of evidence contradicting the stand of the petitioner in regard to watching respondent no.1 and his election agent distributing such calendars and pamphlets or exhorting the voters to cast their votes in the name of their religion and God and Goddess and also the fact that in the report of SDOP (Annexure R/1) it has come on record that SDOP had taken statement of Pandits/Pujaris of the concerned temples and they all denied distribution of such material during election period but admitted such distribution during Navdurga i.e. prior to declaration of election. Any event prior to election will not come within the definition of corrupt practice as has been defined under Section 123 (3) of the R.P. Act. The onus was on the petitioner to examine the proprietor/partner of the firm, which allegedly printed the disputed material, to bring out possible contradictions but the petitioner has failed to discharge this burden. Even otherwise, in the light of the law laid down in the case of **Samant N. Balakrishna (supra)**, no efforts were made to examine the proprietor/partner of the firm "Advance Line" and asking him to produce the original blue print/screen so also the date on which such material was printed only to demonstrate the weakness in the case of the petitioner. Therefore, merely by filing documents the petitioner has failed to prove its contents and also substantiate the allegation that any votes were solicited in the name of Hindu God and Goddess. Thus, this court is of the opinion that Issue No.(i) is not proved so also the Issue No.(ii) and (iii).

57. As the petitioner has failed to lead any cogent evidence to prove issue Nos.(i), (ii) and (iii) about corrupt practice so also the fact that such matter was printed and distributed at

the time of election, the issue No.(iv) of non-printing of name and address of the publisher loses its significance inasmuch as this issue would have been relevant had the petitioner would have been in a position to lead any evidence as to the distribution of aforesaid printing material contained in Ex.P/3 to P/11 at the time of election so to constitute corrupt practice. Since there is evidence that such material was distributed prior to election and this fact has not been rebutted by the petitioner, it can not be said that the material, which has been produced by the petitioner as Ex.P/3 to P/11 will fall within the definition of election pamphlets and calendars and therefore once that material will not come within the definition of election posters and pamphlets/calendars, then non printing of name will not have any effect of violation of Section 127 A of the R.P. Act, therefore, issue no.(iv) is also answered that there is no violation of provisions of Section 127A of the R.P.Act in not printing the name & address of the Printer/Publisher.

58. At this moment it will be appropriate to refer back to the objection in regard to Section 99 (1)(a)(ii) of the R.P. Act. As has been discussed above, because there is no finding of any corrupt practice, there is no requirement to issue notice to any of the person mentioned in the petition in the light of the law laid down in the case of **Balmukund Singh Gautam (supra)**.

59. As far as issue No.(x) is concerned, in the light of the above discussion and finding, election petition fails and is dismissed. Election petitioner, to bear cost of these proceedings, which is quantified at Rs.25,000/-.

Sd/-
(Vivek Agarwal)
Judge
12.09.2017

By order,

Sd/-
(ANUJ JAIPURIAR)
Principal Secretary,
Election Commission of India.